

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

**REGION 4**

In the Matter of:

**Facilities Performance Group, LLC**

Respondent.

Docket No. **FIFRA-04-2022-0707(b)**

**CONSENT AGREEMENT**

**I. NATURE OF ACTION**

1. This is an administrative penalty assessment proceeding brought under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, 7 U.S.C. § 136l(a) (FIFRA or the Act), and Sections 22.13(b) and 22.18 of the *Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules), as codified at Title 40 of the Code of Federal Regulations (C.F.R.) Part 22.
2. This Consent Agreement and the attached Final Order shall collectively be referred to as the CAFO.
3. Having found that settlement is consistent with the provisions of FIFRA and applicable regulations, the Parties have agreed to settle this action pursuant to 40 C.F.R. § 22.18 and consent to the entry of this CAFO without adjudication of any issues of law or fact herein.

**II. PARTIES**

4. Complainant is the Director of the Enforcement and Compliance Assurance Division, who has been delegated the authority on behalf of the Administrator of the United States Environmental Protection Agency (EPA) to enter into this CAFO pursuant to 40 C.F.R. Part 22 and Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).
5. Respondent is Facilities Performance Group, LLC (hereinafter FPG), a limited liability company doing business in the State of Mississippi. This proceeding pertains to Respondent's facility located at 3480 Highway 51 South, Hernando, Mississippi 38632 (Facility).

### III. GOVERNING LAW

6. Pesticides that are sold and distributed in the United States are required to be registered with the EPA pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a.
7. Pursuant to Section 17(c) FIFRA, 7 U.S.C. § 136o(c), and the regulations at 19 C.F.R. § 12.112, an importer (or its agent) desiring to import pesticides or pesticide devices into the United States is required to submit to the EPA Administrator a Notice of Arrival of Pesticides and Devices (NOA) [EPA Form 3540-1] prior to the arrival of the shipment(s) into the United States, or, as an alternative to submitting an NOA, the importer or its agent may file an entry via the U.S. Customs and Border Protection's (CBP) Automated Commercial Environment (ACE) Data Processing System.
8. Pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), it is unlawful for any person to distribute or sell to any person any pesticide that is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.
9. Pursuant to Section 12(a)(2)(N) of FIFRA, 7 U.S.C. § 136j(a)(2)(N), it is unlawful for any person who is a registrant, wholesaler, dealer, retailer, or other distributor to fail to file reports required under FIFRA.
10. Pursuant to 40 C.F.R § 152.15, no person may distribute or sell any pesticide product that is not registered under FIFRA, except as provided in §§ 152.20, 152.25, and 152.30. In part, a substance is considered to be intended for a pesticidal purpose, and thus to be a pesticide requiring registration, if the substance consists of or contains one or more active ingredients and has no significant commercially valuable use as distributed or sold other than use for pesticidal purpose (by itself or in combination with any other substance).
11. A "pest" is defined in Section 2(t) of FIFRA, 7 U.S.C. § 136(t), as any insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism (except viruses, bacteria, or other microorganisms on or in living man or other living animals) which the Administrator declares to be a pest under Section 25(c)(1) of FIFRA, 7 U.S.C. § 136w(c)(1).
12. The term "pesticide" is defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u), to mean any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.
13. The term "to distribute or sell" as defined by Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), includes to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, ship, deliver for shipment, or to release for shipment.
14. Civil penalties under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a) may be assessed by administrative order.

### IV. FINDINGS OF FACTS

15. Respondent is a "person" as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s), and as such is subject to FIFRA and the regulations promulgated thereunder.
16. On or about May 4, 2020, a shipment containing the product "General Household Wipes" arrived at the port of Memphis, Tennessee at the Memphis FedEx Hub (Port Code 2095). The wipe products

were imported by the licensed customs broker, FedEx Trade Networks Transport & Brokerage (FedEx), on behalf of the consignee, FPG. On or around May 12, 2020, FedEx filed an entry into the CBP ACE system on behalf of FPG, for the shipment of “General Household Wipes” under entry number 799-71755887. The entry was filed by FedEx as Program Code “PS1” which indicates that the product being imported was a registered pesticide, but the entry was further coded under disclaimed “A,” indicating the product was a pesticide that would be sold for non-pesticide use, and therefore not regulated by the EPA under FIFRA.

17. On May 15, 2020, the EPA emailed the broker and FPG to inform them that the “General Household Wipes” product being imported may be a pesticide regulated by the EPA and that a Notice of Arrival of Pesticides and Devices [NOA; EPA Form 3540-1] may be required. The EPA also requested that the broker and FPB provide copies of the labels affixed to the “General Household Wipes” product packaging. On May 15, 2020, FPG submitted copies of labels on the product packaging.
18. Upon review of the labels, written solely in Korean, the EPA determined that the labels contained pesticidal claims which, when translated to English, stated: “Super strong sterilization and disinfection of various harmful bacteria,” “disinfectant tissue for prevention of infectious disease in school,” and “Item: Disinfectant.” The packaging containing the wipes also bore pictograms which indicated the product should be used to disinfect surfaces and objects such as school equipment and mobile phones. Based on the pesticidal claims on the product labeling and statements indicating that the product’s intended use is as a pesticide, the product is a pesticide that must be registered pursuant to Section 3 of FIFRA. Pursuant to 19 C.F.R. § 12.112, an importer or the importer's agent desiring to import pesticides or devices into the United States must submit to the Administrator, prior to the arrival of the shipment in the United States, an NOA on EPA Form 3540-1.
19. On or about May 19, 2020, the EPA issued a Notice of Refusal of Admission to FPG for entry number 799-71755887, on the grounds that the products were in violation of both FIFRA Sections 12(a)(1)(A) (sale and distribution of unregistered pesticide) and 12(a)(2)(N) (failure to file reports required by FIFRA).
20. On or about June 23, 2021, an authorized representative of the EPA conducted an inspection at Respondent’s Facility located at 3480 Highway 51 South, Hernando, Mississippi 38632.
21. At the time of the inspection, the inspector inquired about the unregistered pesticide wipes that had been imported on May 4, 2020, through entry number 799-71755887, as described in paragraph 16 above. In response, FPG provided a sales invoice which appeared to show that on or about March 31, 2020, FPG had purchased 100,000 packages of “sanitizing wipes” products from a supplier in South Korea. Based on the invoice and photographs taken during the inspection, the EPA determined that the “sanitizing wipes” products were the same products as the “General Household Wipes” products imported under entry number 799-71755887, as described in paragraphs 16 through 18.
22. On or about June 15, 2022, the EPA issued a Show Cause Letter to FPG. In response, FPG provided information on additional shipments and entries filed by FPG for the importation of the “General Household Wipes” related to the sales invoice for 100,000 packages of “sanitizing wipes” described in paragraph 21. According to FPG, a total of 15 entries were filed for shipments of the General Household Wipes and three (3) of these were filed in ports located in EPA Region 4. These were entry numbers 799-71755887, 799-71793490, and 799-71803620. NOAs were not submitted prior to the arrival of these shipments.

23. The importation of pesticide products meets the definition of “to distribute or sell” as defined by Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg).
24. Because the labels for the sanitizing wipes in the above shipments bore pesticidal claims, these products are pesticides as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u).
25. At the time of importation, the sanitizing wipes were not registered with the Administrator of the EPA.

## **V. ALLEGED VIOLATIONS**

26. The EPA alleges that Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A) by importing, selling, and distributing the unregistered pesticides. Namely, the General Household Wipes described in Section IV of this CAFO.
27. The EPA alleges that Respondent violated Section 12(a)(2)(N) of FIFRA, 7 U.S.C. § 136j(a)(2)(N) by failing to file reports required by FIFRA, namely, the NOA, EPA Form 3540-1.
28. As a result of the violations of FIFRA described above, Respondent is therefore subject to the assessment of civil penalties pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), in conjunction with 40 C.F.R. Part 19, Adjustments of Civil Monetary Penalties for Inflation.

## **VI. STIPULATIONS**

29. The issuance of this CAFO simultaneously commences and concludes this proceeding.  
40 C.F.R. § 22.13(b).
30. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:
  - (a) admits that the EPA has jurisdiction over the subject matter alleged in this CAFO;
  - (b) neither admits nor denies the factual allegations set forth in Section IV (Findings of Facts) of this CAFO;
  - (c) consents to the assessment of a civil penalty as stated below;
  - (d) consents to the conditions specified in this CAFO;
  - (e) waives any right to contest the alleged violations of law set forth in Section V (Alleged Violations) of this CAFO; and
  - (f) waives its rights to appeal the Final Order accompanying this CAFO.
31. For the purpose of this proceeding, Respondent:
  - (a) agrees that this CAFO states a claim upon which relief may be granted against Respondent;
  - (b) acknowledges that this CAFO constitutes an enforcement action for purposes of considering Respondent’s compliance history in any subsequent enforcement actions;

- (c) waives any right it may possess at law or in equity to challenge the authority of EPA to bring a civil action in a United States District Court to compel compliance with the CAFO, and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action;
- (d) by executing this CAFO, certifies to the best of its knowledge that Respondent is currently in compliance with all relevant requirements of FIFRA and its implementing regulations, and that all violations alleged herein, which are neither admitted nor denied, have been corrected;
- (e) waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during any discussions with, or to be served with and reply to, any memorandum or communication addressed to EPA officials where the purpose of such discussion, memorandum, or communication is to persuade such official to accept or issue this CAFO; and
- (f) agrees to comply with the terms of this CAFO.

32. In accordance with 40 C.F.R. § 22.5, the individuals named in the certificate of service are authorized to receive service related to this proceeding and the Parties agree to receive service by electronic means.

#### VII. TERMS OF PAYMENT

- 33. Respondent consents to the payment of a civil penalty, which was calculated in accordance with the Act, in the amount of **FORTY-TWO THOUSAND, SIX HUNDRED DOLLARS (\$42,600.00)**, which is to be paid within thirty (30) calendar days of the Effective Date of this CAFO.
- 34. Payment(s) shall be made by cashier's check, certified check, by electronic funds transfer (EFT), or by Automated Clearing House (ACH) (also known as REX or remittance express). If paying by check, the check shall be payable to: Treasurer, United States of America, and the Facility name and Docket Number for this matter shall be referenced on the face of the check. If Respondent sends payment by the U.S. Postal Service, the payment shall be addressed to:

United States Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, Missouri 63197-9000

If Respondent sends payment by non-U.S. Postal express mail delivery, the payment shall be sent to:

U.S. Bank  
Government Lockbox 979077  
U.S. EPA Fines & Penalties  
1005 Convention Plaza  
Mail Station: SL-MO-C2-GL  
St. Louis, Missouri 63101  
Contact Number: (314) 425-1819

If paying by EFT, Respondent shall transfer the payment to:

Federal Reserve Bank of New York  
ABA: 021030004  
Account Number: 68010727  
SWIFT address: FRNYUS33  
33 Liberty Street  
New York, New York 10045  
Field Tag 4200 of the Fedwire message should read:  
“D 68010727 Environmental Protection Agency”

If paying by ACH, Respondent shall remit payment to:

US Treasury REX / Cashlink ACH Receiver  
ABA: 051036706  
Account Number: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22 – checking  
Physical location of US Treasury facility:  
5700 Rivertech Court  
Riverdale, Maryland 20737  
Contact: Craig Steffen (513) 487-2091  
REX (Remittance Express): 1-866-234-5681

35. Respondent shall send proof of payment within twenty-four (24) hours of payment of the civil penalty, to:

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 4  
R4\_Regional\_Hearing\_Clerk@epa.gov

and

Seth Ramsay  
U.S. Environmental Protection Agency, Region 4  
ramsay.seth@epa.gov

36. “Proof of payment” means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with the Facility name and Docket No. **FIFRA-04-2022-0707(b)**.
37. Pursuant to 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to remit the civil penalty as agreed to herein, the EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the costs of processing and handling the delinquent claim. Accordingly, the EPA may require the Respondent to pay the following amounts on any amount overdue:
- (a) Interest. Interest will begin to accrue on the civil penalty from the Effective Date of this CAFO. If the civil penalty is paid within thirty (30) calendar days of the Effective Date of this CAFO, interest is waived. However, if the civil penalty is not paid in full within thirty (30) calendar days of the Effective Date of this CAFO, interest will

continue to accrue on any unpaid portion until the unpaid portion of the penalty and accrued Interest is paid. Interest will be assessed at the rate of the United States Treasury tax and loan rate, as established by the Secretary of the Treasury, in accordance with 31 U.S.C. § 3717(a)(1), 31 C.F.R. § 901.9(b), and 40 C.F.R. § 13.11(a).

- (b) Non-Payment Penalty. On any portion of a civil penalty more than ninety (90) calendar days past due, Respondent must pay a non-payment penalty of not more than six percent (6%) per annum, which will accrue from the date the penalty payment became due and is not paid, as provided in 31 U.S.C. § 3717(e)(2) and 31 C.F.R. § 901.9(d). This non-payment penalty is in addition to charges which accrue or may accrue under subparagraphs (a) and (c) and will be assessed monthly. 40 C.F.R. § 13.11(c).
- (c) Monthly Handling Charge. Respondent must pay a late payment handling charge to cover the administrative costs of processing and handling the delinquent claim, based on either actual or average cost incurred. 31 C.F.R. § 901.9(c) and 40 C.F.R. § 13.11(b). Administrative costs will be assessed monthly throughout the period the debt is overdue except as provided by 40 C.F.R. § 13.12.

38. If Respondent fails to timely pay any portion of the penalty assessed under this CAFO, pursuant to Section 14(a)(5) of FIFRA 7 U.S.C. § 136l(a)(5), the EPA may:

- (a) refer the debt to a credit reporting agency or a collection agency pursuant to Section 14(a) of FIFRA 7 U.S.C. § 136l(a), 40 C.F.R. §§ 13.13 and 13.14;
- (b) collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, 40 C.F.R. Part 13, Subparts C and H;
- (c) suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with the EPA or engaging in programs the EPA sponsors or funds, 40 C.F.R. § 13.17; and/or
- (d) request that the Attorney General bring a civil action in the appropriate district court to recover the amount assessed pursuant to Section 14(a)(5) of FIFRA, 7 U.S.C. § 136l(a)(5).

39. Penalties paid pursuant to this CAFO shall not be deductible for purposes of federal taxes.

## VIII. EFFECT OF CAFO

- 40. In accordance with 40 C.F.R. § 22.18(c), Respondent's full compliance with this CAFO shall only resolve Respondent's liability for federal civil penalties for the violations and facts specifically alleged above.
- 41. Full payment of the civil penalty, as provided in Section VII (Terms of Payment) shall satisfy the requirements of this CAFO; but shall not in any case affect the right of the EPA or the

United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. 40 C.F.R. § 22.18(c),

42. Any violation of this CAFO may result in a civil judicial action for civil penalties as provided in Section 14(a) of the Act, 42 U.S.C. § 136l(a), as well as criminal sanctions as provided in Section 14(b) of the Act, 42 U.S.C. § 136l(b). The EPA may use any information submitted under this CAFO in an administrative, civil judicial, or criminal action.
43. Nothing in this CAFO shall relieve Respondent of the duty to comply with all applicable provisions of FIFRA and other federal, state, or local laws or statutes, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit, except as expressly provided herein.
44. Nothing herein shall be construed to limit the power of the EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment as provided under the Act.
45. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except upon the written agreement of both Parties, and approval of the Regional Judicial Officer.
46. The provisions of this CAFO shall apply to and be binding upon Respondent and its successors and assigns. Respondent shall direct its officers, directors, employees, agents, trustees, and authorized representatives to comply with the provisions of this CAFO.
47. Any change in the legal status of Respondent, or change in ownership, partnership, corporate or legal status relating to the Facility, will not in any way alter Respondent's obligations and responsibilities under this CAFO.
48. By signing this Consent Agreement, Respondent acknowledges that this CAFO will be available to the public and agrees that this CAFO does not contain any confidential business information or personally identifiable information.
49. By signing this Consent Agreement, the Complainant and the undersigned representative of Respondent each certify that he or she is fully authorized to execute and enter into the terms and conditions of this CAFO and has the legal capacity to bind the party he or she represents to this CAFO.
50. By signing this Consent Agreement, both Parties agree that each party's obligations under this CAFO constitute sufficient consideration for the other party's obligations.
51. By signing this Consent Agreement, Respondent certifies that the information it has supplied concerning this matter was at the time of submission, and continues to be, true, accurate, and complete for each such submission, response, and statement. Respondent acknowledges that there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.
52. The EPA also reserves the right to revoke this CAFO and settlement penalty if and to the extent that the EPA finds, after signing this CAFO, that any information provided by



Respondent was materially false or inaccurate at the time such information was provided to the EPA. If such false or inaccurate material was provided, the EPA reserves the right to assess and collect any and all civil penalties for any violation described herein. The EPA shall give Respondent notice of its intent to revoke, which shall not be effective until received by Respondent in writing.

53. It is the intent of the Parties that the provisions of this CAFO are severable. If any provision or authority of this CAFO or the application of this CAFO to any party or circumstances is held by any judicial or administrative authority to be invalid or unenforceable, the application of such provisions to other parties or circumstances and the remainder of the CAFO shall remain in force and shall not be affected thereby.
54. Unless specifically stated otherwise in this CAFO, each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.

#### **IX. EFFECTIVE DATE**

55. This CAFO shall become effective upon execution of the Final Order by the Regional Judicial Officer on the date of filing with the Regional Hearing Clerk.

**[Remainder of Page Intentionally Left Blank**

**Complainant and Respondent will Each Sign on Separate Pages]**

The foregoing Consent Agreement In the Matter of **Facilities Performance Group, LLC**, Docket Number **FIFRA-04-2022-0707(b)**, Is Hereby Stipulated, Agreed, and Approved for Entry.

FOR RESPONDENT:

  
Signature \_\_\_\_\_ Date 2-17-2023

Printed Name: David Cain  
Title: President  
Address: 3480 Highway 51 south  
Hernando MS. 38632

The foregoing Consent Agreement In the Matter of **Facilities Performance Group, LLC**, Docket Number **FIFRA-04-2022-0707(b)**, Is Hereby Stipulated, Agreed, and Approved for Entry.

FOR COMPLAINANT:

Signing for

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Carol L. Kemker  
Director  
Enforcement and Compliance Assurance Division  
U.S. Environmental Protection Agency, Region 4

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

In the Matter of:

**Facilities Performance Group, LLC,**

Respondent.

Docket No. **FIFRA-04-2022-0707(b)**

**FINAL ORDER**

The Regional Judicial Officer is authorized to ratify this Consent Agreement which memorializes a settlement between Complainant and Respondent. 40 C.F.R. §§ 22.4(b) and 22.18(b)(3). The foregoing Consent Agreement is, therefore, hereby approved, ratified, and incorporated by reference into this Final Order in accordance with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, 40 C.F.R. Part 22.

Respondent is hereby ORDERED to comply with all of the terms of the foregoing Consent Agreement effective immediately upon filing of this Consent Agreement and Final Order with the Regional Hearing Clerk. This Final Order disposes of this matter pursuant to 40 C.F.R. §§ 22.18 and 22.31.

**BEING AGREED, IT IS SO ORDERED.**

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Tanya Floyd  
Regional Judicial Officer

## CERTIFICATE OF SERVICE

I certify that the foregoing Consent Agreement and Final Order, in the Matter of **Facilities Performance Group, LLC**, Docket No. **FIFRA-04-2022-0707(b)**, were filed and copies of the same were emailed to the Parties as indicated below.

**Via email to all Parties at the following email addresses:**

To Respondent:       C. Eric Davis  
Phillips Murrah P.C.  
101 N. Robinson Ave., Thirteenth Floor  
Oklahoma City, Oklahoma 73102  
(405) 235-4100  
cedavis@phillipsmurrah.com

David Cain  
President  
Facilities Performance Group, LLC  
3480 Highway 51 South  
Hernando, Mississippi 38632  
(662) 469-9582  
dcain@fpg-llc.com

To EPA:               Seth Ramsay  
Case Development Officer  
ramsay.seth@epa.gov

Bob Caplan  
Senior Regional Counsel  
caplan.bob@epa.gov

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Shannon L. Richardson, Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960